

BEFORE THE NATIONAL PARK SERVICE

In re Special Regulations, Areas of the National)	
Park System, National Capital Region, Special)	Regulation Identifier Number
Events and Demonstrations, 83 Fed. Reg. 40,460)	1024-AE45
(proposed Aug. 15, 2018))	
)	

AFFIDAVIT OF KIMBERLEY PROPEACK

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I, Kimberley Propeack, am the Chief for Politics and Communication for CASA. For the past 12 years I have engaged in the permitting process with the NPS on behalf of my organization and on behalf of partner community organizations dozens of times and have significant knowledge of, and experience with, the existing permitting system.
2. CASA is the foremost Latino and immigrant organization in the mid-Atlantic region. We are dedicated to creating a more just society by building power and improving the quality of life in working class and immigrant communities.
3. Starting from humble beginnings in 1985 assisting Central American refugees fleeing wars and civil strife at home, we have worked tirelessly to bring immigrant communities out of the shadows and into greater power, dignity and legitimacy. Today, we count nearly 100,000 low income immigrants as our members.
4. We envision a future where we stand in our own power, our families live free from discrimination and fear, and our diverse communities thrive as we work with our partners to achieve full human rights for all.
5. To these ends, CASA provides employment placement; workforce development and training; health education; citizenship and legal services; and financial, language, and literacy training to Latino and immigrant communities, among other services.

6. Our key values include:

Solidarity. We believe that working in solidarity strengthens us in the struggle.

Diversity. We believe we are stronger when we enhance, recognize and celebrate our diversity.

Social justice. We believe in social justice and our ability to change our own lives.

Racial equality. We believe in demonstrating and fighting for racial equity.

Powerful voice. We believe in having a powerful voice in the decisions that affect our lives.

Excellence. We believe we achieve excellence when we collaborate, innovate, evaluate, and take pride in our work.

7. In furtherance of these values, CASA participates in organizing First Amendment protected activities, and our membership participates in protests, peaceful assemblies and petition activities including on the public parklands under the jurisdiction of the National Park Service. We have participated in organizing large demonstrations on the National Mall in multiple years, and many rapid response demonstrations on parks under NPS jurisdiction in reaction to current events or announcements, including in front of the White House and on the White House sidewalk. We have demonstrated in front of U.S. Immigration and Customs Enforcement (ICE), in front of Customs & Border Enforcement, the Department of Justice, on the public space under NPS jurisdiction outside of the Trump Hotel, to reference just a few. *See, e.g.*, Public Gathering Permit 13-1473 (demonstration of 35,000 in support of immigration reform), Public Gathering Permit 14-1624 (demonstration on White House sidewalk to receive President's announcement on immigration relief and to provide testimonials of how expansive such relief should be), Public Gathering Permit 17-0943, demonstration of 10,000 in support of immigrant rights), Application for Parade Permit (from White House area, with different routes depending on whether DACA is announced to be continued or rescinded).
8. CASA, our members, and the broader constituencies we represent, would be substantially and materially harmed were the NPS' proposed rules given effect.
9. **Pay for Protest Provisions.** The rule making invites comments as to whether NPS should charge demonstrators for permitted demonstrations, and in regulatory revisions indicates that the NPS may charge or restrict demonstrators for including "special event elements" within their protests. Our communities are working class and immigrant communities, who struggle to meet their human needs and advance their visions for a better and more just society with very limited resources. Any measure that would impose costs and charges on free speech, peaceful assembly and petition activities would be a severe impediment to engaging in those precious values of democracy. We are able to engage in free speech because it is free. Possession of wealth, access to financial resources, and economic means must not become the gatekeeper to the exercise of these fundamental rights. In the strongest of terms, we oppose these proposals.
10. **Distinctions Between Demonstration Activities and Special Event Elements.** The NPS's proposal to conflate "demonstration activities" and "special event elements" is without any rationality or basis. Although the proposed regulations do not specify with clarity what is intended to constitute a "special event element" inside a demonstration, in our experience the NPS has made a distinction between political spoken word and political expressions that are set to music or expressed through cultural performances.

11. This is a distinction for which we cannot recognize any basis, as our communities' political expressions are evocatively expressed at times through spoken word, at times through lyrics of songs, at times through the performances of indigenous cultural groups which are inherently expressive and political even if not a single word was spoken.
12. Nevertheless, in demonstration logistical planning meetings, NPS officials have advised us that they operate with a rule of thumb that events must have at least fifty percent spoken word or else they are not considered a First Amendment activity. NPS has required us to submit an agenda of intended events, which officials evaluate against this standard. Through their review and restrictions, government officials impact the program of free speech events.
13. I recall the planning around a major event in 2013 organized around the issue of comprehensive immigration reform. The event was substantial and complex, we had many forms of expression and advocacy, including speakers, music, and culture. Our communities often give their voice expression through art and we also had a substantial exhibit of art at this event. Among the speakers and persons present on stage were 26 members of Congress, the head of the National Education Association, Dreamers, children of undocumented parents, and many others. Our activity was for the purpose of "*communication or expression of views or grievances*" as demonstrations are defined in NPS regulations.
14. The NPS went through our program agenda with extraordinary scrutiny and we were forced to change our agenda to comply with their rule that spoken word has to be 50% of the agenda or else the event would not be treated by the agency as First Amendment protected. We had to change the content of our expression to meet officials' demands. Among those participating in the event as musical performers were Lila Downs and the group Los Tigres del Norte; both of which envelope sweeping political commentary throughout their songs. These performers were chosen because they are political, their very presence is a political statement, and their works - which often evoke the struggles of our people including the indigenous - are evocative expressions of our struggles, demands, and celebrations of our aspirations. From the perspective of NPS officials, these musical and cultural political expressions are not accorded robust First Amendment protections.
15. Each element of our agenda, whether political expression set to music, or artwork, or other expressions were measured against the NPS's standard that 50% must be spoken word or else the activity as a whole is not deemed First Amendment protected under their permitting system. We provided multiple revisions of our agenda to NPS officials, and with each they evaluated the content and forced us to change our agenda, the content of our expression, in order to satisfy their internal rule. We changed the content of our expression in order to secure, at the very last minute, the permit that was needed in order for our event to occur.
16. Aside from the fact that this enforced distinction is arbitrary, the result is that agency officials become gatekeepers of our myriad ways of political expression. It is a form of censorship. If we do not comply, officials will simply withhold our permit and we will have no permission to peaceably assemble.


17. We know, historically, that these great public spaces in Washington, D.C. have been used for political expressions that are cultural and lyrical. When, in 1939, Marian Anderson was denied a stage at DAR Constitution Hall because of her race, and gave a public concert at the Lincoln Memorial, it was a political expression. Her very presence and performance was political. The NPS did not review the lyrics of her works, including an aria from *La favorite*, Ave Maria, “America” and three spirituals, against officials’ view of what was an acceptable expression of “views and grievances.” In fact, Secretary of the Interior Harold Ickes led her to the stage.
18. Respectfully, we submit that NPS officials should not be in the business of reviewing or demanding changes to the content of our political expressions. When we organize a demonstration, all of the elements are selected because they carry, facilitate or enhance our expression of views and grievances. These are our voices, our cultures, our expressions, and and they are not necessarily given voice through spoken word. Their resonance is political regardless of form, or else they would not be a part of our demonstration activities.
19. Given our experience, we see the proposed changes in regulatory definitions (83 Fed. Reg. 40462 - 40463) as codifying a practice that is premised on distinctions that are misguided and without basis at the onset. To the extent that these changes could suggest that NPS could impose charges on musical expressions or exhibits as “special event elements” within a demonstration, that is an even equally chilling way of enforcing a censorship or discouragement of certain forms of political communication that are essential forms within our political expressions.
20. **Proposed Impediments to Spontaneous Demonstrations and to Organizing Longer-Planned Demonstrations.** On a recurrent basis, our constituencies are affected by policies and decisions to which there is a need for an immediate response. For example, when President Barack Obama announced its administrations DACA (Deferred Action for Childhood Arrivals) policy, we organized more than 150 Dreamers to come to the White House area to watch the speech, to assemble on the White House sidewalks to express our support for and celebration of these policies, and to create a visible manifestation of people who were directly impacted by the announcement. Likewise, when Attorney General Jeff Sessions cancelled DACA, we came to the same area, this time to express and oppose the inhumanity of this policy decision.
21. Time is of the essence for our demonstrations that are in rapid response to new policies or circumstances that affect our communities. As with the DACA decisions, when the government cancelled Temporary Protected Status for El Salvador, we were at the White House sidewalks and area the very next day.
22. Rapid response demonstrations occur with sufficient frequency that we have our own formalized practices. If an announcement or need arises before 2 p.m., we will shut down our centers of operation, announce to our membership, and assemble at the White House or other designated area within two hours of the announcement. If the announcement occurs after 2 p.m., we will assemble the following day at 10:00 a.m.

23. The proposed regulations remove the 24-hour deemed granted rule, 83 Fed. Reg. 40468, which helps give us confidence that permitted demonstrations in response to rapidly evolving or announced events will be lawful and allowed. It replaces it with a rule giving the NPS discretion to refuse to authorize a demonstration in response to breaking events if a permit is not requested 48 hours in advance.
24. Our members seek to engage in lawful and permitted demonstration activity. For many reasons, because they may bring families with small children, because they do not seek to risk arrest, because the federal government has engaged in rhetoric and actions that target immigrant communities, among others, we must ensure our members are able to access a lawful, permitted space in which to engage in free speech. The prompt granting of a permit, even while there may be ongoing discussions as to logistics, signifies that a demonstration is allowed by the government, without which some or many members of our communities are simply too fearful to exercise their rights under the First Amendment.
25. The proposed changes would ban “structures” at any spontaneous or rapid response demonstrations, 83 Fed. Reg. 40467 - 40468 (“structures may not be used for events that are not requested at least 48 hours in advance”). The definition of structure is so broad as to encompass many items facilitative of expression that are safe and which we normally bring to rapid response actions. For example, amplified sound is essential, the need for which increases as participation increases. Amplified sound enables us to project our message, so people from a moderate distance can understand why we have gathered to protest. We want people, who can see our presence, to be able to understand just why we have come together, what we are seeking, what we are opposing. This is, of course, a fundamental function of free speech, to engage with and inform others. Amplified sound helps our participants to act in concert, to be organized. This is an essential aspect of assembly. For organizers, amplified sound plays a critical role in communicating logistics and information to people who have joined our demonstration.
26. The ban on “structures” would prohibit us from using our amplified sound equipment. To facilitate our demonstrations, we use a sound speaker that is wheeled. Its dimensions are approximately 2 square feet, with a speaker that rises about six feet. We have used this repeatedly at demonstrations, with no suggestion that it was unsafe or inappropriate - - as it is neither. Yet, this would be banned under the new regulations. As would be other ordinary and safe items that facilitate expression. For example, we may bring a small folding table or two, which we use to display printed political literature to passers-by. Or a small number of lightweight chairs for our elderly or fatigued. All these would be banned at our rapid-response demonstrations, yet they are safe and facilitate of expression. Nor are these items “structures” in any ordinary sense of the word.
27. In addition to the harm that this rule will cause our organization and membership in exercising our free speech rights in response to breaking events, the elimination of this rule will also harm our ability to mount and organize events that require longer planning. The NPS proposes that it may place applications into a new limbo category called “provisionally reserved” and then sit on applications for months until closer in time to the date of an event before it engages in logistical discussions with applicants. Additionally, it will have no hard

deadline for permit approval. For an application that is submitted well in advance of a date, allowing the NPS to wait until 40 or 60 or 90 days before an event to process the application will disrupt or organizing activities. Applications submitted well in advance of a free speech activity provide the time necessary to effectively organize the event. Applications may be submitted up to a year in advance. There is no rational basis to sit on an application for months and doing so, particularly coupled with the elimination of the 24 hour deemed granted rule, is detrimental to our ability to organize. The NPS should tie its processing time frame to the date of the application in these circumstances, not to the date of the event.

28. **Closures of Public Space.** The proposed closure of the White House sidewalk, leaving a mere 5 feet for a pedestrian walkway, would eliminate access to one of the most unique spaces in the nation from which to engage in free speech, assembly and petition activities. There is no space like this, within sight and sound of the seat of executive authority, with a clear visible view of the front entrance to the White House. These spaces are irreplaceable.
29. The closure of such public spaces, historically used for protest close to the White House, is a problem that has grown in recent years. We often assemble in Lafayette Park for a protest or a press conference on issues that relate to federal policy. The National Park Service and/or the U.S. Secret Service has a practice of increasing frequency of closing the park, literally in the midst of an event. I was present this year to observe such a closure, which appeared to be completely arbitrary and while an event was ongoing. I have heard from other activists that such closures have occurred to them. The closures of these spaces appears arbitrary and certainly has the effect of literally removing the space on which demonstrators can stand out from underneath their feet - - even as they are peaceably assembled and engaged in free speech.
30. The permanent closure of the White House sidewalk - - which has no justification whatsoever in the rulemaking - - is as arbitrary and capricious and unjustified as the *ad hoc* closures of NPS parks which is now a recurring problem. These are spaces that belong to the people and are entrusted to the stewardship of the NPS. They do not belong to the NPS, and we respectfully oppose these increasing measures to deprive the people, including our constituencies, from accessing these historic and essential public forums, which are at the very heart of democratic expression and free speech.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed on October 15, 2018.



Kimberley Propeack